IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Sukh Singh. Versus State of Rajasthan.

S.B. Criminal Revision No. 215/2006 against the order dated 5-12-2005 passed by the Sessions Judge, Hanumangarh, in Criminal Appeal No. 177/2005.

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Date of Order: April 24, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Dr. Sachin Acharya, for the petitioner.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

With the consent of the learned counsel for the parties, the revision petition is being heard and decided at the admission stage.

The petitioner was convicted by the judgment and order dated 22-2-2005 passed by the Additional Judicial Magistrate, Hanumangarh (for short, "the trial Court" hereinafter) in Criminal Case No. 531/2003 for the offences under Sections 457 and 380 IPC and sentenced to undergo one year's simple imprisonment and a fine of Rs.500/-, in default of payment of fine further to undergo one month's simple imprisonment for the offence under Section 457 IPC; and one year's simple imprisonment and a fine of Rs.500/-, in default of

payment of fine further to undergo one month's simple imprisonment for the offence under Section 380 IPC. Against the judgment and order dated 22-2-2005 passed by the trial Court, the petitioner filed an appeal before the Sessions Judge, Hanumangarh (for short, "the Appellate Court" hereinafter), being Criminal Appeal No. 177/2005, beyond the period of limitation and as such the appeal was barred by limitation. An application under Section 5 of the Limitation Act was also filed along with the appeal seeking condonation of delay. By the impugned order dated 5-12-2005, , the Appellate Court dismissed the application filed by the petitioner under Section 5 of the Limitation Act and also dismissed the appeal as being barred by limitation. Aggrieved by the order impugned dated 5-12-2005, the petitioner has filed the instant criminal revision.

I have heard learned counsel for the parties. Perused the order impugned. As also the judgment and order of the trial Court dated 22-2-2005.

From the perusal of the order impugned, it appears that the grounds seeking condonation of delay which prevented the petitioner to file the appeal before the Appellate Court within the period of limitation, do not appear to be very sound, yet the case of the petitioner, who has been convicted by the trial Court and his appeal has been dismissed only on the technical ground of limitation, requires consideration.

It is settled law that while considering "sufficient cause", the expression "sufficient cause" has to be liberally construed. The condonation of delay is a discretion of the court which is required to be exercised judiciously.

In Apangshu Mohan Lodh & ors. Vs. State of Tripura & ors., AIR 2004 SC 267, the Hon'ble Supreme Court held that power to condone delay is discretionary and has to be liberally construed and if sufficient cause is shown for condonation of delay, the delay should be condoned.

In Bhagmal Vs. M.P. Cooperative Marketing & Consumer Federation Ltd. & ors., (2003) 11 SCC 727, an award was passed against the appellant by the Registrar, Cooperative Societies. The appellant preferred a statutory appeal challenging the said award after a delay of about 6 years. The Appellate Authority after being satisfied with the facts stated in the petition condoned the delay and admitted the appeal. The first respondent challenged the said order before the High Court by filing a writ petition whereby the said order was quashed, against which an appeal was filed before the Hon'ble Supreme Court. Allowing the appeal the Hon'ble Supreme Court held that there is no doubt that the delay in filing the appeal was apparently very long. But, when the Appellate Authority in exercise of its jurisdiction was satisfied with the facts and reasons stated in the petition for condoning the delay, it was not proper for the High

Court to exercise its extraordinary jurisdiction under Article 226 or 227 of the Constitution and set aside the order of the Appellate Authority, which only enabled the appellant to have the statutory remedy of appeal pursued further.

In G. Ramegowda, Major etc. Vs. The Special Land Acquisition Officer, Bangalore, AIR 1988 SC 897, an appeal was filed by the Land Acquisition Officer against the award at the belated stage on account of inaction on the part of Government Counsel. High Court condoned the delay. The Hon'ble Supreme Court held as under:-

> "There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel, there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberate construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay."

In Shakuntala Devi Jain Vs. Kuntal Kumari & ors., AIR 1969 SC 575, the Hon'ble Supreme Court held that Section 5 of the Limitation Act gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon

principles; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant. If the appellant makes out sufficient cause for the delay, the Court may in its discretion condone the delay in filing an appeal.

In the instant case, the petitioner has been non-suited on the technical ground. From the facts available on record, it appears that there is no gross negligence or deliberate inaction or lack of bonafide which can be attributed to the petitioner. Keeping in view the decisions of the Hon'ble Supreme Court, referred here-in-above, in my view, the ends of justice would be met by condoning the delay in filing the appeal.

It is settled law that at the time of consideration of application for condonation of delay, the Court is required to see the merit of the case also. From the order impugned, it nowhere appears that the Court below examined the merit of the case. It was the first appeal against conviction which needed to be decided on re-appreciation of the evidence. The petitioner has been denied the right to appeal only on the technical ground of limitation and, therefore, in my view, the impugned order deserves to be set aside.

In the result, the revision petition is allowed. The impugned order dated 5-12-2005 passed by the Appellate Court

in Criminal Appeal No. 177/2005 is set aside. The application filed by the petitioner under Section 5 of the Limitation Act is allowed and the delay in filing the appeal is condoned. The appeal filed by the petitioner before the Appellate Court is restored. The matter is remanded to the Appellate Court to decide the appeal on merits after hearing the petitioner and the Public Prosecutor. Record of the lower court be returned forthwith. The application for suspension of sentence stands disposed of.

(H.R. PANWAR), J.

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